In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 221

UNITED STATES OF AMERICA ET AL., APPELLANTS

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY ET al., appellees

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the above-entitled case on appeal.

STATUTES

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U.S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U.S. Code, Tit. 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U.S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

DECREE

The decree sought to be reviewed was entered February 5, 1934.

The petition for appeal was filed and the order allowing the appeal was entered March 5, 1934.

THE NATURE OF THE CASE AND RULINGS BELOW

This suit was brought by 20 railroads, suing on behalf of themselves and more than 670 other railroads to set aside an order of the Interstate Commerce Commission, entered on January 5, 1933, in a proceeding entitled Docket No. 24050, *A. Johnston, Grand Chief Engineer of the Brotherhood of Locomotive Engineers* v. *Atlantic Coast Line Railroad Company et al.*, 190 I.C.C. 351. The order amended rule No. 157 of the Commission's rules, theretofore established under the Boiler Inspection Act (U.S. Code, Title 45, Sections 22–34), by prescribing that steam locomotives built after April 1, 1933, should be equipped with power-operated reverse gear and that, as to locomotives theretofore built and not already so equipped, such gear should be installed on those used in road service weighing 150,000 pounds or more and on those used in switching service weighing 130,000 pounds or more, such installation to be made the first time the locomotives were shopped for so-called "Class 3", or heavier, repairs, and, in any event, prior to Janu-

ary 1, 1937. The amendment also prescribed that power reverse gear, operated by air, should have a suitable steam connection to enable use of steam as an auxiliary in case of air failure.

The proceeding before the Commission had its inception in the complaint filed on November 10, 1930, by A. Johnston, Grand Chief Engineer of the Brotherhood of Locomotive Engineers, and D. B. Robertson, President of the Brotherhood of Locomotive Firemen and Enginemen, wherein it was alleged in substance that the use by the defendant carriers of locomotives, equipped with hand-operated reverse gears instead of power-operated reverse gears contravened the prohibitions of the Boiler Inspection Act (U.S. Code, Title 45, Secs. 22–34) in that whereas, on the one hand, power-operated reverse gear has been developed and is in use on a large number of locomotives " which is practical, suitable, and safe to use", on the other hand, hand-operated reverse gear is improper, unsuitable, and unsafe, and the use thereof unnecessarily endangers the health, comfort, and general welfare of the engineers and firemen, and subjects them and other employees, the travelling public and travellers on the highways, to unnecessary peril to life or limb in particulars as specified in the complaint. Upon the issues raised by the complaint and the answers of the numerous railroad companies which were made defendants, hearings were had at which voluminous testimony was taken.

The case was submitted to the Commission on this testimony after oral argument had been had and briefs submitted. Thereafter the Commission made and entered its report and order.

By Bill of Complaint filed June 2, 1933, the appellees asserted that the order of the Commission was invalid and should be set aside for the following reasons: (1) That the Commission, following its establishment of rules and instructions for the inspection of locomotives, their parts and appurtenances, thereafter lacked power to change the same, except that, upon request of the carriers for a change, it might approve or disapprove such change; (2) That a power-operated reverse gear is not a safety device or appurtenance within the remedial purpose of the Boiler Inspection Act; and (3) That the Commission's order is without support of essential findings of fact and is without support of substantial evidence.

Hearing was had before a statutory court of three judges, and the case was submitted as on final hearing. The court thereafter rendered an opinion,

power to enter the order, but holding the order to be invalid on the ground that the Commission arbitrarily disregarded, and failed to give proper consideration and weight to, certain evidence. A final decree was entered permanently annulling, enjoining, and setting aside the Commission's order.

CASES SUSTAINING JURISDICTION

United States v. *Erie Railroad Co.*, 280 U.S. 98.

United States v. *Baltimore & Ohio R.R. Co.*, 284 U.S. 195.

I.C.C. v. *Oregon-Washington R. Co.*, 288 U.S. 14.

United States v. *Northern Pacific Ry.*, 288 U.S. 490.

Dated March 5, 1934.

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